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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/089,253

08/26/2002

Michael Langer

LANGER=1

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1444 7590 07/21/2009  
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EXAMINER

REFAI, RAMSEY

ART UNIT

PAPER NUMBER

3627

MAIL DATE

DELIVERY MODE

07/21/2009

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/089,253	<b>Applicant(s)</b> LANGER ET AL.	
	<b>Examiner</b> RAMSEY REFAI	<b>Art Unit</b> 3627	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 20 April 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) 10-20 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-9 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)          | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

## **DETAILED ACTION**

### ***Response to Amendment***

Response to 'Response to Election/Restriction' filed April 20, 2009. Applicant's election of Group I (claims 1-9) is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election **without traverse** (MPEP § 818.03(a)). Claims 10-20 are withdrawn. Claims 1-9 are now presented.

### ***Response to Arguments***

1. Applicant's arguments with respect to claims 1-9 filed January 14, 2009 have been considered but are moot in view of the new ground(s) of rejection.

### ***Claim Rejections - 35 USC § 112***

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 5 and 8 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The limitation "the acknowledgement from the payment gateway" in claim 5 lacks proper antecedent basis. There appears to be no acknowledgement from the payment gateway in the previous claims.

### ***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

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(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1-4, 6, 7, and 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Stewen (WO 99/22346) in view of Tedesco et al (US 6,282,523).

5. As per claim 1, Stewen teaches a method for controlling and operating a machine having a mobile radio communication transmit/receive unit and configured to be called from a user's mobile telephone unit over a mobile telephone network via an abbreviated mobile telephone number affixed on machine, comprising:

upon receipt of a call from the user's mobile telephone unit to the abbreviated mobile telephone number establishing a connection to a bank (**see at least page 6, lines 7-29, page 2, line 14-27**) prompting, via the vending machine, the user to select a merchandise item, after the merchandise item has been dispensed, generating, a billing entry in the vending machine, and settling the billing entry via a payment gateway, the step of settling comprising accessing the user's account, determining the user's account number based on the user's mobile telephone number (**see at least page 5, lines 14-28, page 6, lines 10-36**).

Stewen teach issuing a request to a payment based on the users identified telephone number (**see at least page 5, lines 14-28, page 6, lines 10-36**) but fails to teach issuing a request with a reference to a vending machine to *reserve a certain maximum amount on the account of the user*. However, in the same field of endeavor, Tedesco et al teach a method for reserving funds for an amount equal or less than the available balance on the user's account (**see at least abstract, fig 2, column 3, lines 23-38**). It would have been obvious to one of ordinary skill in the art to combine Tedesco et al with Stewen because doing so would allow for funds on the user's account to be reserved prior to making a purchase.

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Additionally, it is noted that **KSR** forecloses the argument that a **specific** teaching, suggestion, or motivation is required to support a finding of obviousness. Under **KSR**, a claim would have been obvious if the claimed elements were known in the prior art and one skilled in the art could have combined the elements as claimed by known methods with no change in their respective functions, and the combination would have yielded nothing more than **predictable results** to one of ordinary skill in the art at the time of the invention. Thus the claimed subject matter likely would have been obvious under **KSR**.

6. As per claim 2, Stewen teaches wherein charging for the dispensed merchandise takes place by combining standard IN traffic control with standard Internet payment systems (**page 6, lines 10- 36**).

7. As per claim 3, Stewen teaches a method further comprising: determining the actual telephone number of the vending machine in an intelligent-network control point, establishing a connection from the intelligent network control point to the payment gateway (**page 6, lines 10- 36**).

8. As per claim 4, Stewen-Tedesco et al teach a method further comprising: making the reservation of the certain maximum amount with the reference to the telephone number of the vending machine, positively acknowledging the reservation in the intelligent network control point and holding the reserved amount unavailable for other payments until the reserved amount has been cleared (**see Tedesco at least abstract, fig 2, column 3, lines 23-38**).

9. As per claim 6, Stewen teaches a method wherein the billing entry includes the vending machine telephone number, the GSM user's telephone number, a merchandise identification and the price ().

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10. As per claim 7, Stewen teaches a method further comprises transmitting the billing entry by the vending machine to the payment gateway via a GSM short message or GSM-USSD

**(page 10, lines 1-10).**

11. As per claim 9, Stewen teaches a method according to controlling the vending machine by a voice connection **(see at least page 5, lines 14-28, page 6, lines 10-36).**

### ***Allowable Subject Matter***

12. Claims 5 and 8 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

### ***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ramsey Refai whose telephone number is (571) 272-3975. The examiner can normally be reached on M-F 8:30 - 5:00 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ryan Zeender can be reached on (571) 272-6790. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Ramsey Refai  
July 20, 2009  
/Ramsey Refai/  
Primary Examiner, Art Unit 3627